

September 28, 2012

Taxpayer
Taxpayer's Address

Taxpayer
MTHO # 719

Dear Taxpayer:

We have reviewed the evidence submitted for redetermination by *Taxpayer* and the City of Phoenix (Tax Collector or City). The review period covered was October 2007 through December 2010. Taxpayer's protest, Tax Collector's response, and our findings and ruling follow.

Taxpayer's Protest

The Tax Collector issued an assessment against Taxpayer for unpaid privilege tax under the commercial lease classification. Taxpayer was not aware that the monthly returns were not filed. Taxpayer stated it will get the tax paperwork current so that the tax assessment can be as accurate as possible. The assessment average is more than Taxpayer will owe. Taxpayer would like to complete the taxes and understand the petition.

Tax Collector's Response

Taxpayer did not file privilege tax returns or pay privilege taxes during the audit period. Phoenix Tax Code (PTC) Sections 14-445 and 14-446 impose the privilege tax on leasing or renting real property located within the city for consideration. The assessment was based on an estimate using the gross income shown on previously filed tax returns. Taxpayer has not presented records or other documents to show that the Tax Collector's estimate of gross receipts was not reasonable and correct. The City's assessment should be upheld as issued.

Discussion

The Tax Collector issued Taxpayer an estimated assessment under the commercial lease classification. Taxpayer had not filed returns or paid taxes during the audit period. The Tax Collector's estimate was based on gross income that had been reported by Taxpayer in tax returns that had been previously filed for other periods.

Taxpayer protested the assessment arguing that the amount of the assessment was overstated and asked for an opportunity to complete its tax returns and provide accurate information. Taxpayer however has not submitted any returns or other documentation establishing its gross income for the audit period.

The privilege tax is measured by gross income from the business. Taxpayer was required to keep books and records showing Taxpayer's gross income attributable to its activities in the City. Regulation § 14-350.1(g) requires a taxpayer's books and records to indicate both individual transaction amounts and totals for each reporting period for each category of taxable, exempt,

and excluded income. Taxpayer has not provided the necessary records to permit the Tax Collector or the Hearing Officer to ascertain Taxpayer's gross receipts and any applicable deductions or exemptions for the review period.

Because Taxpayer has not provided the required records, PTC §§ 14-545(b) and 14-555(e) authorize the Tax Collector to determine the correct tax by estimating Taxpayer's income on a reasonable basis. Taxpayer had previously filed City privilege tax returns. The Tax Collector based his estimate on these previously filed returns. It was reasonable for the Tax Collector to base his estimate on Taxpayer's past tax history. Under the circumstances, the Tax Collector used a reasonable method to estimate Taxpayer's gross income where Taxpayer provided no income information.

It is Taxpayer's responsibility to prove that the Tax Collector's estimate is not reasonable and correct. Taxpayer argued that the assessment was over stated and Taxpayer requested an opportunity to provide the necessary information. However, Taxpayer has not provided any information. Taxpayer has not proven that the Tax Collector's estimate was not reasonable.

The Tax Collector's assessment is upheld.

Findings of Fact

1. Taxpayer leased real property located within the City.
2. Taxpayer did not file privilege tax returns or pay City privilege taxes during the period October 2007 through December 2010.
3. The Tax Collector audited Taxpayer and issued an assessment for the period October 2007 through December 2010.
4. The Tax Collector based the assessment on privilege tax returns that had previously been filed by Taxpayer.
5. Taxpayer protested the assessment stating it was not aware that the returns had not been filed and it wanted to get its tax paperwork current.
6. Taxpayer did not provide any documentation with its protest.
7. The Tax Collector timely filed his response to the protest and indicated that as of the date of filing the response the City has not received any additional information or documentation from Taxpayer nor has Taxpayer filed any tax returns since the assessment.
8. Taxpayer did not file a reply to the City's response or submit any documentation or tax returns.

Conclusions of Law

1. The City privilege tax is imposed on persons engaging in certain business activities. Phoenix Tax Code, Chapter 14.

2. The privilege tax is measured by the person's gross income from the taxable business activity. PTC § 14-400(a)(1).
3. It is the taxpayer's responsibility to cause his return and payment to be timely received by the Tax Collector. PTC § 14-530(c).
4. The presumption is that an assessment of additional tax is correct. *See, Arizona State Tax Commission v. Kieckhefer*, 67 Ariz. 102, 141 P.2d 729 (1948).
5. Taxpayers are required to maintain records showing the gross income of the taxpayer attributable to any activity occurring in whole or in part in the City. Regulation 14-350.1(a).
6. The books and records of the taxpayer are required to indicate both individual transaction amounts and totals for each reporting period for each category of taxable, exempt, and excluded income. Regulation 14-350.1(g).
7. Taxpayer has not provided the required records for the audit period showing Taxpayer's income attributable to its activities in the City.
8. The Tax Collector was authorized to estimate Taxpayer's income to determine the correct tax. PTC § 14-555(e).
9. The Tax Collector's estimate is required to be made on a reasonable basis. PTC § 14-545(b).
10. The Tax Collector's estimate based on Taxpayer's past tax history was reasonable.
11. It is the responsibility of the taxpayer to prove that the Tax Collector's estimate is not reasonable and correct. PTC § 14-545(b).
12. Taxpayer did not prove that the Tax Collector's estimate of gross receipts was not reasonable and correct.
13. The Tax Collector's Notice of Assessment is proper.

Ruling

Taxpayer's protest of the assessment for the period October 2007 through December 2010 by the City of Phoenix is denied.

The Tax Collector's Notice of Assessment to Taxpayer for the period October 2007 through December 2010 is upheld.

Taxpayer has timely rights of appeal to the Arizona Tax Court pursuant to Model City Tax Code Section -575.

Sincerely,

Hearing Officer

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c:

Municipal Tax Hearing Office